IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2078 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ M BATTIWALA (ADVOCATE)

Versus

STATE OF GUJARAT

Appearance:

MR KETAN A DAVE for Petitioner

MR. K.T. DAVE, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the decision of the State Government rejecting the petitioner's application for renewal of the certificate to practise as a Notary.

2. The facts leading to the filing of this petition, briefly stated, are as under:-

In the year 1987 the petitioner was appointed as Notary by the Government of Gujarat. The certificate to practise as a Notary was renewed from time to time. The last certificate which was issued to the petitioner was for the period from 23.4.1996 to 22.4.1999. The petitioner applied for renewal of the certificate on 30.6.1999 and also paid Rs. 500/- as renewal fees by money order. The petitioner in his application had submitted that on account of illness and death of his mother-in-law, he could not prefer the application before the expiry of the period of certificate. On 24.9.1999 the respondent issued a notice to the petitioner calling upon him to furnish certain information regarding notary work carried out by him after the expiry of term of Notary i.e. 22.4.1999. The petitioner submitted information ultimately. By the impugned order dated 31.12.1999 the competent authority rejected the application for renewal of Notary Certificate on the ground that there is no valid reason to condone the delay. It is against the aforesaid order that the present petition is filed.

3. Mr. Ketan Dave, learned counsel for the petitioner has made the following submissions:-

(i) Neither the Notaries Act nor the Rules prescribe any period of limitation for making an application for renewal. Hence the petitioner's application could not have been rejected on the ground of limitation.

(ii) In any case the petitioner had given a valid reason for submitting the application for renewal after the expiry of the period of the certificate. As per the provisions of Section 5(2) of the Notaries Act, the petitioner was entitled to have certificate of practice renewed for a period of three years at a time and the authority had no discretion to reject the application on the ground of delay.

Reliance is placed on the decision of the High Court of Madras in S. Ramanarayanan Vs. The State of Tamil Nadu reported in 1997(II) CTC 443, a copy whereof is produced at the time of hearing of this petition.

4. The learned counsel for the respondent Mr. K.T.

Dave submitted that (i) the application for renewal has to be made before the expiry of the period and if the application is made after the expiry of the period it is open to the State Government to reject the application for renewal.

(ii) The State Government has a discretion to decide whether to renew the certificate or not and in exercise of its discretion it is open to the State Government to consider whether the petitioner had given valid explanation for the delay in making the application for renewal. It is also submitted that the explanation given by the petitioner, on facts, was not tenable as the petitioner himself was not sick. If the petitioner could do the notarial work after 22.4.1999, there was no reason why the petitioner could not make the application for renewal.

(iii) In fact, practising as a Notary without having certificate to practise, amounts to a criminal offence and therefore the State cannot be compelled to consider the application of a person who has practised as a Notary even after the expiry of the period of the certificate and before renewal is granted by the Government.

(iv) Earlier also the petitioner had made delay in making the application for renewal and on the previous occasion also the petitioner was warned that there should not be any delay in making the application for renewal.

5. Section 5(2) of the Notaries Act reads as under:-

> "(2) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time."

This provision does not contain any period of limitation for making an application for renewal. Similarly Rule 9 of the Notaries Rules, 1956 or any other Rules do not contain any provision prescribing any period of limitation. Rule 9 referred to by the State Government only provides for fees for renewal and not the period of making for such an application. Rule 9 reads

as under:-

"Fee for the issue, extension or renewal of certificate of practice - The fee for the issue of a certificate of practice shall be three hundred and fifty rupees; the fee for the extension of area of practice shall be two hundred and fifty rupees and the fee for the renewal of a certificate of practice shall be one hundred rupees, and the fee for a duplicate certificate shall be fifty rupees."

6. Having heard the learned counsel for the parties and having considered the provisions of the Notaries Act and the Rules and the decision of the High Court of Madras in the case of S. Ramanarayanan (supra), this Court has no hesistation in holding that there is no legal provision prescribing any period of limitation for making an application for renewal of the certificate to practise as a Notary. Of course, the application for renewal would even then have to be made within a reasonable time and if such application is not made within reasonable time from the date of expiry of the period of the certificate, it will be open to the Government to infer that the concerned person had abandoned practice as a Notary.

7. The next question is whether the petitioner had made application for renewal within a reasonable time. The impugned order of the competent authority proceeds on the footing that the petitioner had made the renewal application on 30.7.1999. The competent authority therefore observed that there was a delay of 98 days from 22.4.1999. At the hearing Mr. Dave, learned A.G.P. agrees that the application was made on 30.6.1999 and therefore the delay was only of 68 days.

The competent authority rejected the application of the petitioner on the ground that illness or death of mother-in-law cannot amount to sufficient cause.

8. Now as per the settled legal position even when a statute prescribes a period of limitation with power to condone the delay for sufficient cause, the expression `sufficient cause' is to be construed liberally. In the instant case, since there is no statutory period of limitation and the only requirement which the Court can read is that the application must be made within a reasonable time, the authority has to take a liberal view

in deciding whether the application was made within reasonable time or not.

Considering the fact that the petitioner's mother-in-law was sick and that ultimately she expired on 5.5.1999 and that the petitioner's mother-in-law was at Jamnagar which required the petitioner to attend obsequious ceremonies at Jamnagar, the petitioner residing at Bhavnagar could not make the application within time. It is true that the petitioner had worked as Notary after 22.4.1999 till the petitioner made application for renewal and even thereafter. It is true that ordinarily renewal of such certificate may be treated as something routine and therefore the person may continue to work as a Notary after making application for renewal in anticipation of renewal as per Sec. 5(2) of the Notaries Act. However, the petitioner's working as a Notary after 22.4.1999 and before 30.6.1999 (i.e. before making the application for renewal) cannot be said to be proper. In any event, looking to the explanation given by the petitioner, the Government ought to have considered petitioner's application as the same was preferred within reasonable time and the Government ought to have considered the application for renewal without being swayed by the fact that the application was made after the expiry of the period for which the certificate was last issued i.e. after 22.4.1999. The petitioner's request for renewal once granted would relate back to the date immediately after expiry of the period of certificate of practice.

9. It is true that the petitioner had earlier also made delay in making applications for renewal of the certificate of practice. However, in view of the fact that the Court has already taken that there was no period for making an application for renewal and all that is required is that such an application is to be made within a reasonable time, the objection raised on this score has no bearing on the merits of the controversy about the right of the petitioner to get renewal of his certificate of practice. It is also required to be noted that the decision of the State Government to reject the petitioner's application for renewal is not based on any allegation of any irregularities or any misconduct and it is based solely on the ground that the petitioner's application was made beyond the period of limitation for which no valid explanation was given by the petitioner.

10. In view of the above discussion, the impugned order dated 31.12.1999 (Annexure-A) to the petition is quashed and set aside and the respondents are directed to

consider the application for renewal of certificate for practice as a Notary on merits and in accordance with law, in light of the observations made in this judgement and in accordance with the provisions of Section 5(2) of the Notaries Act, 1952. There does not appear to be any reason why the Government should not issue such certificate within one month from the date of receipt of this writ or a certified copy of this order, whichever is earlier.

11. In view of the objection raised that the petitioner had practised as a Notary even after expiry of the period of certificate, the petitioner is directed to deposit with the State Government the amount of Notary fees collected by him after the expiry of the period of the certificate (22.4.1999) and prior to the date on which he made the application for renewal (30.6.1999). This shall be done within three weeks from today.

12. Before parting with the matter, the Court would like to place on record the suggestion made to the Government through the learned A.G.P. during the course of hearing that like the seal of the Notary in the U.S.A., in our state also the seal of the Notary should be required to mention the date of expiry of the certificate.

13. Rule is made absolute with no order as to costs. Direct service is permitted.

(M.S. SHAH, J)

(pkn)